

Date of decision: 21-12-1995

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(21-12-1995)

Mr. Ajit Padiwal for the petitioners
Mr. D.A. Bambania for the respondents.

ORAL JUDGMENT:

Heard the learned counsel for the parties. Reply to the writ petition has not been filed though rule was issued on 31st March, 1994, returnable on 25th April, 1994. Mr. Bambania, learned counsel for the respondents made request to the court to grant one more indulgence to the respondents to file reply. I fail to see any justification for the request which has been made by Mr. Bambania. After rule was issued in this case, one year and nine months have passed, and despite having such a long time available to them the respondents have not chosen to file reply. It is really a sorry state of affair in the Government. It exhibits how the Government takes the litigations. This matter pertains to the petitioners who are out of employment and seeking appointment on the basis of their selection which has been made after inviting applications from the open market. It is the second time that the petitioners have approached this court in the matter. Taking into consideration all these facts the request made by Mr. Bambania is declined.

2. The petitioners came to be appointed in the service of the respondents on the post of Computer after selection in the year 1984. The respondents invited applications from the employment exchange for recruitment to the post of Statistical Assistant, a post higher in status than the post of computer. The petitioners complained that no public advertisement has been given inviting applications on these posts and the names have been sponsored from the office of the District Employment Exchange. When the petitioners are in service and that too in a regular service, their names could not have been sponsored by the employment exchange and as such they would have been denied the right of consideration for appointment in public employment. The petitioners having come to know about the fact the respondents are going to make appointment by selection on the post of Statistical Assistant, made request to the respondents to consider their candidature. The petitioners have come up with the case that they possess all the requisite qualifications as required for appointment on the post of Statistical Assistant. As it usually happens in the Departments, adopting technical approach in the matter, that is, names of the petitioners have not been sponsored by the employment exchange, the respondents have not called the petitioners for interview for the post of Statistical Assistant. At this juncture the petitioners were left with no option except to approach this Court for protection of the fundamental right as conferred to them under Articles 14 and 16 of the Constitution of India by filing special civil application No.2258 of 1991. In that petition this Court directed the respondents by interim order to interview the petitioners for the post of Statistical Assistants. In pursuance of the order of this Court the respondents have

permitted the petitioners to appear before the selection committee, they have been interviewed and, as stated by the petitioners, their names have been placed at serial No.4 and 15 respectively in the select list.

3. The grievance made by the petitioners in the present writ petition is that though they are at serial No.4 and 15 in the select list, the respondents have given appointment to candidate at serial No.17. The petitioners made representations from time to time to the respondents, who have not responded to either of the representations. When the petitioners felt helpless at the hands of the respondents to get the relief, they filed the present writ petition before this Court.

4. On 31st March, 1994 rule was issued to the respondents as aforesaid and interim relief was granted in favour of the petitioners, whereunder the respondents were restrained from making appointment of the candidates who are below serial No.17 till further orders. The contention of the petitioners that appointment has to be made strictly in the order of merits, and the action of the respondents to by-pass the meritorious candidates and to give appointment to less meritorious candidates is violative of the provisions contained in Articles 14 and 16 of the Constitution of India deserves acceptance. Mr. Bambania, learned counsel for the respondents is also not in a position to successfully defend the contention raised by the learned counsel for the petitioners.

5. In absence of reply on behalf of the respondents, the facts as contained in the writ petition stand uncontroverted. When the respondents have to make appointment in the order of merits of the candidates in the select list, and if they have violated the order of merit, then certainly it is a case of violation of the provisions of Articles 14 and 16 of the Constitution of India. The petitioners have a fundamental right for consideration for appointment and further right of appointment in the order of merit where the respondents have decided to make appointment on the basis of merit list prepared by the selection committee. It is not the case of the respondents that the merit list has not been given effect to and appointments have not been made.

6. In the result this writ petition is partly allowed. The respondents are directed to consider the case of the petitioners for appointment on the post of Statistical Assistant. In case any candidate lower in merit than the petitioners has been given appointment, then the petitioners, in the order of their respective merit, shall

be given appointment with effect from the date of appointment of the person or persons just below them in the merit list. In case the respondents decide to give appointment to the petitioners on the basis of the said merit list, the petitioners shall not be entitled to arrears of salary of the post of Statistical Assistant but they will be entitled to all other consequential benefits like seniority from the date of deemed appointment. Rule made absolute in the aforesaid terms. No order as to costs.